INCOMING TELEGRAM

DEPARTMENT OF STATE—DIVISION OF COMMUNICATIONS AND RECORDS TELEGRAPH BRANCH

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Rec'd November 1, 1947
5:41 a.m.

P E N

CHS

FROM: Rome

TO: Secretary of State

NO: 3403, October 26, midnight

PRIORITY

Commercial treaty No. 16. Article 16, paragraph 1.

Initial summary of Italian position and related facts in MYTEL 3003, September 30, incomplete. Protocol provision authorized in DEPTEL 1946, October 3 based on this incomplete statement, has not been submitted to Italian delegation.

Difficulty of controlling distribution of production of small enterprises is only one important factor in policy of government in leaving distribution of domestic production uncontrolled or only partially controlled while imports are wholly or extensively subject to control. Other factors are inability of the bureaucracy to organize and administer thorough system of internal controls, unwillingness of government in face of opposition of industrial interests, to impose certain controls, the relative ease with which imports can be controlled, and a desire to permit a free market insofar as possible.

To a considerable extent the control over distribution of imports are integrated with exchange controls and quantitative restrictions, with respect to which considerable latitude is permitted by draft treaty. Licenses issued for importation of certain articles specify their distribution. Government imports on own account considerable quantity of materials for distribution to government controlled enterprises or to

enterprises

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or to enterprises or institutions deemed by it to be essential, or for general distribution through the rationing system.

With Italy under present necessity of importing from US only essential articles not obtainable elsewhere, question of whether control system is in conflict with rule of national treatment with regard to internal sale, distribution and use appears largely academic. It is obvious, however, that system could be administered in discriminatory fashion when shortages begin to be overcome.

In Embassy's view, it would be desirable to retain a rule which would provide basis for protest and suggestion if and when controls operate in a manner unnecessarily injurious to US commerce. No practicable method of accomplishing this end is readily apparent however. The rule of reason or of fair and equitable treatment seems hardly applicable. Italians react against provision for consultation or notification as detracting from sovereignty. It is suggested that the words following the words "national origin" in the proposed protocol provision be deleted. Department may wish to give consideration to adding a declaratory statement that the parties agree that the controls should be removed as rapidly as the supply situation warrants, and that they should be applied, insofar as practicable, so as not to place the imported article in an unfavorable competitive position as compared with the like domestic article.

Proposed convention on recognition of academic degrees. Department's position as set forth in DEPTEL 2007, October 9, communicated to Italians at meeting October 17. In earlier discussion of subject Simonis stated that in case Dept should find proposed convention unacceptable, his government would wish to propose that Federal Government assist in the making of arrangements between the Italian Government and individual American universities.

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universities. This is apparently an adaptation of the proposal contained in paragraph four of the draft convention transmitted in my A-1071, October 14. On October 17, Lombardo inquired whether Department had indicated its reaction to this proposal as a substitute for the proposed convention. Instructions requested whether Department perceives any possibility of such arrangements as Italian Government has in mind.

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NOTE: Message delayed in transmission.

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October 30, 1947

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SUMMARY MINUTES

Thirteenth Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation

Approved:

Participants:

For the United States: Messrs. Walmsley, Ainsworth, Setser.

For Italy: Mr. Lombardo, President. Messrs. Sorrentino, La Rosa, Ippolito, De Rossi, Timarco, Melano, Sensi, De Vera.

Time: 10:00 A.M., Thursday, October 30, 1947

Place: Palazzo Chigi

Article XXIII

The Italian delegation inquired as to the views of the American delegation regarding the obligations of the two parties under the rules of this article with respect to the transit of military personnel, particularly military personnel not in uniform or wearing other indication of their military character. They stated that if one of the parties were required under the treaty to permit transferof such persons, it might as a result become involved in an international dispute with a third state. The American negotiators replied that they would consult their Government on the point, and give an answer at a later meeting.

Article XIII

The American negotiators stated that they were authorized to propose the amendment of the second sentence of Paragraph 2, as follows:

"However, in such an event the nationals of either High Contracting Party in the territories of the other High Contracting Party, who have not declared their intention to acquire the nationality of such other High Contracting Party, shall be exempt from service in the armed forces of such other High Contracting Party if within a reasonable period of time they elect, in lieu of such service, to enter the armed forces of the High Contracting Party of which they are nationals."

They stated

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They stated that they were also authorized to say that it was the view of their Government that stipulations regarding the timing of the option of the person subject to conscription with respect to the armed forces in which he should serve could, along with other relevant details, be made a subject of the "necessary arrangements" contemplated in the last sentence of the paragraph. They added that it was the view of their Government also that if the United States should in the future adopt procedures regarding conscription similar to those followed in the recent war, the United States Government would consider it reasonable to require that the option be exercised before induction into the military service.

The Italian delegation stated that the amended sentence and the explanations were satisfactory to them.

ADDITIONAL PROTOCOL

The American negotiators stated that they were authorized to agree to the following amendment of the first sentence of Paragraph 3.

> "Neither High Contracting Party shall impose any new restriction under paragraph 1 of the present Protocol without having given the other High Contracting Party notice thereof which shall, if possible, be not less than 30 days in advance and shall not in any event be less than ten days in advance."

The Italian delegation inquired whether the American delegation considered that the explanation regarding the character of the notice required, which was recorded in the minutes of October 10, was applicable to the amended provision. The American negotiators replied in the affirmative. The Italian delegation stated that the amended sentence and the explanation were acceptable to them.

Article XV

The American negotiators said that they had received instructions from their Government regarding the Italian proposal that paragraph 2 be amended to indicate that the concession to be granted regarding goods enroute should be based upon complete reciprocity. They said that they had been authorized to offer the following redraft of the paragraph in the hope that it might meet the Italian position.

> "2. No administrative ruling by the United States of America effecting advances in rates of duties or charges applicable under an established and uniform practice to imports originating in the territories of the Italian Republic, or imposing any new requirement with respect to such importations, shall as a general rule be applied to articles the growth, produce or manufacture of the Italian Republic already en route at the time of publication thereof in accordance with the preceding paragraph; reciprocally, no administrative ruling by the Italian Republic effecting advances in rates of duties or charges applicable under an established and uniform practice to imports originating in the territories of the United States of America, or imposing any new requirement with respect to such importations, shall as a general rule be applied to articles the growth, produce or manufacture of the United States of America already en route at the time of publication

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publication thereof in accordance with the preceding paragraph. However, if either High Contracting Party customarily exempts from such new or increased obligations articles entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the date of such publication, such practice shall be considered full compliance by such High Contracting Party with this paragraph. (Final sentence of Paragraph remains unchanged.)"

The American negotiators said that their Government felt some delicacy about participating in an arrangement for determining Italy's treaty obligations to third countries, and felt that it would be unfortunate for Italy to take a step in connection with this treaty which would constitute an announcement of intention to follow the conditional interpretation of most-favored-nation provisions in other instruments, including international agreements, covering customs administration and imports procedures. They referred to the fact that rules similar to those in paragraph 2 of this article were included in the proposed ITO Charter, along with a definite commitment for unconditional most-favored-nation treatment.

The Italian delegation stated that it would study the proposed re-draft, and discuss the matter further at a later meeting.

The American negotiators stated that the United States was strongly committed to the policy of unconditional most-favored-nation treatment, and said that it was their understanding that the Italian delegation did not contemplate interpreting in a conditional sense any unconditional most-favored-nation commitment toward the United States. The Italian delegation stated that that understanding was correct.

Article VII

The American delegation requested that the Italian delegation clarify, inasmuch as the minutes of previous discussion of this Article did not indicate, what precise wording in paragraph 2 of the Article had been considered objectionable.

The Italian negotiators stated that their objection arose out of the provisions with respect to the withdrawal in foreign exchange of the proceeds of sale of inherited property, that they had originally suggested that everything after the word "therefor" in the last sentence be deleted, and that they had expressed the view that this question should be considered in connection with the similar rule concerning withdrawal of compensation in Article V, paragraph 2. They said that their objection concerns the inclusion of the words: "upon the most favorable terms applicable to such currency at the time application for the withdrawal of such proceeds is filed".

The two delegations agreed to consider this matter again after there had been further discussion of the compensation rule proposed in Article V, paragraph 2.

Article V

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Article V

The Italian delegation inquired whether the American negotiators were prepared to comment regarding the earlier Italian proposals with respect to (a) the date which would govern the applicable exchange rate for the withdrawal of compensation and (b) withdrawal in foreign currency based on a differentiation according to the currency of the original investment.

The American delegation stated that it felt that the Italian proposals in their preliminary form did not afford a complete and detailed basis for final judgment. The American negotiators said that they hoped the Italian delegation would prepare a new statement of its position on this matter, taking into consideration the following clarification of the general view of the United States on the subject, as set forth by the Department of State.

The American negotiators emphasized that, in the view of the United States Government, the rule of assuring just and effective compensation to the former owner of property taken by act of foreign Government is clearly intended to meet circumstances of a special nature against which the foreign owner and investor should be protected. Under such special circumstances, he faces an abnormal and non-commercial risk, not readily foreseeable and impossible to discount, and his contribution to the economy of the foreign country may be discouraged at the outset unless assurance is given that he will be promptly paid a just and effective compensation in the event his property is taken.

In the view of the American Government, it was stated, the intention of a foreign Government to provide just and effective compensation under such circumstances would be unquestioned when it was evident that compensation would be made without unnecessary complication, dispute or long delay and when it was evident that the compensation was effective in the sense that it could be freely disposed of by the recipient according to his desire, whether for reinvestment in the same country or by withdrawal in foreign currency.

With specific reference to the proposal of the Italian delegation to differentiate between investments according to whether they were originally made in lire or in dollars, the American negotiators referred to numerous complications which would result in the practical application of the proposal and which would bring about disputes and delays in making compensation. The adoption of a simple and practicable rule of non-differentiation, it was pointed out, would avoid the difficulty and delay in determining by minute historical study, the nature and extent in individual cases of the original investment. Even if all records were available for the investigation, many complicated situations would arise - cases involving investments made through subsidiary corporations or interests in third or fourth countries, cases of the reinvestment of profits derived from capital of diverse origin, cases of partial investment made in the form of materials, equipment or other assets transferred from various other countries, cases involving the assignment of patents and the use of foreign techniques and productive experience, cases affected by the shifting of national boundaries, and other possible complications. These situations would in turn require lengthy

administrative

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administrative procedures and expense, as well as the likely establishment of Special Commissions for determining the facts, for interpreting the legal aspects and for the arbitration of disputes. The simple rule would not only avoid these difficulties but would also make it possible for the Government concerned to estimate readily the approximate amount of foreign exchange which would be required to compensate for any proposed expropriation or series of expropriations.

The right of withdrawal of compensation in foreign currency without differentiation as to the origin of the investment, the American negotiators stated, should be considered as an integral part of the problem of providing just and effective compensation. The freedom of action of the investor to change his investment, or to disinvest and return to his country of origin, should not be lost solely because his property has been taken by the Government. It was recognized, and provided in the proposed treaty rule, that the property owner might be unable to withdraw compensation in foreign exchange owing to the temporary foreign exchange difficulties of the foreign country; but it was considered that the compensation to be withdrawn should be protected in the meantime against exchange depreciation, and that the right of complete withdrawal in foreign exchange should be recognized as the general rule to be applied under the special circumstances covered by the Article.

The Italian delegation stated that it would examine its position on this subject, taking into consideration the views expressed by the American negotiators, and would provide a more complete statement of the proposals of the Italian Government at a later meeting.

Article XXIV

The American negotiators stated that they had been instructed to propose the amendment of subparagraph (d), Paragraph 3, by adding the Trust Territory of the Pacific to the list of areas excepted on behalf of the United States. The amended sub-paragraph would read as follows:

> "(d) advantages now accorded or which may hereafter be accorded by the Italian Republic to San Marino, to the Free Territory of Trieste or to the State of Vatican City, or by the United States of America or its territories or possessions to one another, to the Panama Canal Zone, to the Republic of Cuba, to the Republic of the Philippines or to the Trust Territory of the Pacific."

The Italian delegation stated that the amended subparagraph was acceptable to them.

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